



# TOWN OF WARE

Planning & Community Development  
126 Main Street, Ware, Massachusetts 01082  
(413) 967-9648 ext. 120

## PLANNING BOARD

### MEETING AGENDA

Location: Board of Selectmen's Meeting Room  
Town Hall, 126 Main Street, Ware, MA 01082

Date & Time: Thursday, August 18<sup>th</sup>, 2022 @ 7:00 PM

#### Digital Participation:

Phone number: 929-205-6099

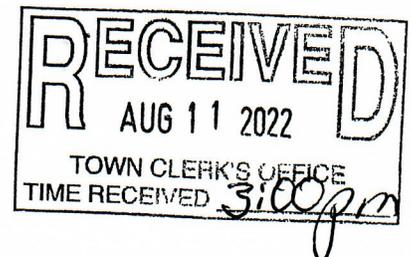
Meeting ID: 784 604 1861

Passcode: 01082

Instructions for call-in option: at or before 7pm call the phone number above and when prompted enter the Meeting ID number. The platform is Zoom Meetings. Join online: <https://zoom.us/join>

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- Pledge of Allegiance
  - Administrative
    - Approval of minutes from July 21<sup>st</sup>, 2022
    - Approval of minutes from August 4<sup>th</sup>, 2022
  - Scheduled Appearances
    - 7:10 pm: Proposed Scenic Road Bylaw Discussion with Historic Commission
      - Continued discussion on the proposed draft Scenic Road Bylaw.
  - Old Business
    - Proposed Zoning Changes Discussion
      - Proposed Rural Business Overlay District
      - Urban Fill
      - Redrawing of Residential Business (RB) District at 256 West Street
  - New Business
    - Any matters that are brought up that the Chair did not anticipate including on the agenda prior to this meeting.
  - Town Planner Update

The next Planning Board meeting will be held September 1<sup>st</sup>, 2022.



At the time of posting, the agenda items listed above are what is reasonably anticipated by the Chairman to be discussed at this meeting. Other items not listed may be brought up for discussion to the extent permitted by law. The general public is invited to this and all meetings of the Ware Planning Board.



# TOWN OF WARE

## Planning & Community Development

126 Main Street, Ware, Massachusetts 01082

t. 413.967.9648 ext. 120

### Planning Board

Meeting Minutes from

**Thursday, July 21, 2022**

Board of Selectmen's Meeting Room, Town Hall

#### **Planning Board Members in Attendance:**

Rick Starodoj, Chairman  
Ed Murphy, Vice-Chairman (remote)  
Nancy Talbot, Clerk  
Kenneth Crosby

#### **Historical Commission in Attendance:**

Elizabeth Hancock, Alternate  
Lynn Caulfield Lak (Chair)  
Wanda Mysona (Vice-Chair)  
Alice Atkinson-Bonasio  
Claudia Kadra  
Elena Palladino

#### **Staff Members in Attendance:**

Rob Watchilla, PCD Dept. Director

#### **Members of the Public in Attendance:**

Joshua Kusnierz (remote)  
Geoff McAlmond (remote)

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## **PLEDGE OF ALLEGIANCE**

Chairman R. Starodoj called the meeting to order at 7:00pm and led the Pledge of Allegiance.

## **MOMENT OF SILENCE**

R. Starodoj held a moment of silence for long-time Planning Board member, Joseph Knight, who recently passed away. Joseph Knight brought a great deal of knowledge and experience to the Board and will be deeply missed.

## **ADMINISTRATIVE**

### **Vacancy on Planning Board**

R. Starodoj stated, with the recent passing of Mr. Knight, there is now a vacancy on the Board that must be filled.

N. Talbot read a letter she drafted to send to the Board of Selectmen regarding the vacancy.

R. Starodoj stated E. Murphy was attending the meeting remotely and K. Crosby was absent.

## Approval of Minutes

**Motion** made by N. Talbot to table approval of the minutes from Thursday, July 7<sup>th</sup>, 2022. Seconded by E. Murphy. There was no additional discussion.

R. Starodoj	Aye
E. Murphy	Aye
N. Talbot	Aye
K. Crosby	Absent

**All in favor. Approved 3/0/1.**

K. Crosby joined the meeting at 7:05pm.

## PUBLIC HEARINGS

### Permit Fee Schedule Hearing (continued discussion)

R. Watchilla presented proposed changes to the current special permit fee schedule. The proposed changes would include the addition of Special Permit – Level 1A which would include breeding of dogs or cats (4+); livestock, poultry; home business; customary home occupation; home based contractors. R. Watchilla also presented pricing changes for Special Permit Levels- 1, 1A, and 2 with the addition of an abutter's fee.

R. Starodoj suggested the abutter fee be changed from \$.67 to \$1.00 per abutter

R. Watchilla and the planning board discussed which party should be responsible for paying the advertising costs of Special Permit in the newspaper and that the applicants should be made aware of extra costs involved.

**Motion** made by K. Crosby to approve the Special Permit Fee Schedule with the changes of \$.67 to \$1.00 per abutter, pricing adjustment for levels 1, 1A, and 2 and addition of Level 1A. Seconded by N. Talbot

R. Starodoj	Aye
E. Murphy	Aye
N. Talbot	Aye
K. Crosby	Aye

**All in favor. Approved 4/0/0.**

## SCHEDULED APPEARANCES

### Joint Meeting with the Historical Commission

The Historic Commission presented concerns pertaining to the placement and design of scenic road signage

Claudia Kadra requested that battery storage facilities be added to the scenic bylaw document in the section where Solar is mentioned

The Historic Commission discussed concerns of the scenic road bylaw in regards as to how it would affect the clearing of brush and routing tree maintenance, and the abilities of the Board of Selectmen have to remove trees without a public hearing.

J. Kusnierz confirmed that scenic bylaws are not to interfere with any type of routine maintenance.

R. Starodoj asked if the allowable size of trees that can be cut should be expanded from 1.5” to 6” and over.

The Historic Commission asked if the widening of roads/highways had been accounted for when it comes to the costs of relocating and reassembling stone walls and suggested there be added public hearings for that.

The Historic Commission asked what the requirements are for announcing the removal of a tree. J. Kusnierz responded and listed his requirements for notifying the public prior to tree removal whether it was living or dead.

The Historic Commission and G. McAlmond discussed what steps he takes to determine tree removal and how he minimizes the impacts of a project.

R. Watchilla presented a list of roads compiled by the Historic Commission for consideration of scenic road status. R. Starodoj suggested limiting the list and that the demarcation points of the road should be noted and review feedback from the public hearing.

R. Watchilla suggested continuing the discussion on 08/18/2022

**Motion** made by E. Murphy to continue discussion August 18, 2022. Seconded by N. Talbot.

R. Starodoj	Aye
E. Murphy	Aye
N. Talbot	Aye
K. Crosby	Aye

**All in favor. Approved 4/0/0.**

## **NEW BUSINESS**

### **Review of Newly Proposed Subdivision Regulations**

R. Watchilla and the Planning board reviewed pages 11, 12, and 13 of the Subdivision Regulations document.

R. Starodoj inquired if the information contained in section 1.1 would comply with accessory apartments which R. Watchilla confirmed would.

R. Starodoj and the Planning Board inquired if there was any verbiage in the document stating the site plan would be null and void if not recorded with the registry of deeds within a certain period of time. The planning board discussed what period of time would be appropriate. K. Crosby suggested 90 days to which R. Starodoj and N. Talbot agreed.

Upon reviewing section D, K. Crosby inquired about the denial of plans are worded. The Planning Board discussed whether or not the denied applicant could fix the issues and be approved or if they would need to completely reapply.

## **TOWN PLANNER UPDATE**

### **USDA Rural Energy Pilot Program**

R. Watchilla shared that The Town of Ware has jointly applied for a grant through the USDA rural energy pilot program “Putting Solar Energy to work for the local rural economy”, citing the objectives of the program and the benefits to the residents of Ware.

### **Planning Assistance Grant**

The Pioneer Valley Planning Commission’s grant application was approved and will fund research and development for the zoning language relating to battery storage. Meetings are tentatively set to start in late August or September 2022

### **Main Street LED Sign**

R. Watchilla spoke of continuing work being done regarding the sign and that they are waiting for pricing quotes and renderings . N. Talbot inquired about the placement of the sign and R. Watchilla confirmed the location of the sign. The sign would be placed in the empty lot next to Veterans’ Park on Main St.

**West Street Corridor Study**

R. Watchilla stated that he is awaiting one memo which should arrive by end of day July 22, 2022 and copies would be made available to the Planning Board

**Planning & Community Development Department Administrative Assistant Position**

References are currently being checked and a candidate should be announced at the next meeting

**ADJOURN**

**Motion** made by N. Talbot to adjourn the meeting at 8:35pm. Seconded by K. Crosby. No additional discussion.

R. Starodoj	Aye
E. Murphy	Aye
N. Talbot	Aye
K. Crosby	Aye

**All in favor. Approved 4/0/0.**

**NEXT PLANNING BOARD MEETING DATE:**

**Thursday, August 4<sup>th</sup>, at 7:00pm.**

Minutes from Thursday, July 21<sup>st</sup>, 2022.

Respectfully submitted by,

Kristen Jacobsen  
Administrative Assistant  
Planning & Community Development

<b>Minutes Approved on:</b> _____
Starodoj _____
Murphy _____
Talbot _____
Crosby _____



# TOWN OF WARE

**Planning & Community Development**  
126 Main Street, Ware, Massachusetts 01082  
t. 413.967.9648 ext. 120

## Planning Board

Meeting Minutes from

**Thursday, August 4, 2022**

Board of Selectmen's Meeting Room, Town Hall

**Planning Board Members in Attendance:**

Rick Starodoj, Chairman  
Ed Murphy, Vice-Chairman (remote)  
Nancy Talbot, Clerk  
Kenneth Crosby  
Elizabeth Hancock, Alternate

**Green Venture, LLC in Attendance:  
Canadian Tree Experts in Attendance:**

Michael Harris  
Alex Bergeron  
Bernard Bergeron

**Staff Members in Attendance:**

Rob Watchilla, PCD Dept. Director  
Stuart Beckley, Town Manager  
Anna Marques, Building Commissioner/Zoning Officer

**Members of the Public in Attendance:**

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## PLEDGE OF ALLEGIANCE

Chairman R. Starodoj called the meeting to order at 7:00pm and led the Pledge of Allegiance.

## ADMINISTRATIVE

### Approval of Minutes

**Motion** made by N. Talbot to approve of the minutes from Thursday, July 7<sup>th</sup>, 2022. Seconded by E. Murphy. There was no additional discussion.

R. Starodoj	Aye
E. Murphy	Aye
N. Talbot	Aye
K. Crosby	Aye

**All in favor. Approved 4/0/0.**

## SCHEDULED APPEARANCES

### SPR-2022-02: Green Venture, LLC

-Continued Discussion on the minor site plan review for the proposed Adult Use Marijuana Dispensary (Green Venture, LLC) at 14 West Street

M. Harris presented plans for the site at 14 West Street with the addition of exterior lighting and added a generator as a precaution.

R. Starodoj inquired about the possibility of installing ADA access to the building. M Harris stated he met with the ADA committee along with S. Beckley and A. Marques and it was decided the construction of a multimodal entrance would not be feasible due to space and expense constraints. M. Harris stated there would be a possibility of constructing such an entrance in the future if he removed the building next door. The ADA committee approved to move forward without handicap access.

K. Crosby inquired if M. Harris had explored the option of internal ADA access. M. Harris responded that yes it had been explored but proved to be too expensive based on the value of the building.

A.Marques presented meeting minutes from the ADA committee. One of the committee members stated if she were to go shopping she would not choose the location due to the challenges of the parking. The committee member said they would more likely contact the business owner and seek to be referred to a comparable business.

N. Talbot clarified if a person were unable to access the property due to mobility issues that M. Harris would provide alternative locations. M. Harris agreed he would do so.

R. Starodoj asked that the minutes from the ADA committee meeting be presented to the Planning Board. After review he stated he found the ADA Committees conclusion to be reasonable. E. Hancock agreed.

K. Crosby asked if the ADA committee meeting was public or private to which A. Marques responded it was a public meeting. K. Crosby asked if she was comfortable with their determination to which she responded that she was.

K. Crosby stated he had concerns regarding the generator and the disruption it could cause the neighbors. M. Harris clarified that it was to be a propane generator

**Motion** made by K. Crosby to approve the minor site plan. Seconded by N. Talbot. There was additional discussion regarding concerns raised by K. Crosby about the disruption the generator could cause the neighbors, M. Harris responded that the generator started monthly and was propane.

R. Starodoj	Aye
E. Murphy	Aye
N. Talbot	Aye
K. Crosby	Aye

**All in favor. Approved 4/0/0.**

**Proposed Zoning District Change: 415-417 Belchertown Road (Beregeron)**

Proponents are seeking to redistrict from Rural Residential (RR) to Industrial (I) on two parcels (21-0-21 & 21-0-22) located on Belchertown Rd. Current site of Canadian Tree Experts and the planned site of an 8 acre solar array

R. Watchilla read a letter written by B. Bergeron to the planning board. He also read a letter from B. Bergeron's attorney citing reasons that the rezoning of their parcel would not constitute spot zoning.

K. Crosby inquired if rezoning the area would have any impact on the solar array installed on the site. R. Watchilla clarified it would not.

K. Crosby asked where the closest Industrial zoning location was and if there was one adjacent to the property. R. Watchilla responded stating the nearest Industrial zone was separated by a few miles. R. Watchilla also said that this was not unusual and that the Town's other industrial zones were separated by approximately 1.5 miles from each other. The uses that the Bergeron's were looking to incorporate would fit within the Industrial category.

B. Bergeron said the property was purchased in 1984 and the saw mill opened before any zoning laws came into effect. K. Crosby inquired what the property's use was once zoning was adopted to which B. Bergeron replied that it was a sawmill at that time as well as running a tree service. R. Starodoj replied that both of those fall under the agricultural category which B. Bergeron confirmed.

B. Bergeron stated Fuel Services of Hadley approached them about installing bulk propane storage on their site. A. Bergeron said that they had been given a letter of commitment from the fuel service company stating that if they would construct the tank farm.

N. Talbot asked if the tanks would be constructed near the road and A. Bergeron responded that they would be installed toward the back of the property and would not be seen from the road.

E. Murphy asked how much of the 28 acre parcel was currently in use. B. Bergeron responded saying 8 acres for the sawmill and 8 acres for the solar array.

K. Crosby and the Planning board members inquired where the nearest body of water in relation to the business was located. Which the planning board discussed was quite a distance away.

R. Starodoj inquired as to where the neighboring residences are, stating he did not agree with the proposed use, but that the Industrial designation would open up the property for too many uses which would not be compatible with the neighborhood. R. Starodoj said that some of the uses could prove to be compatible.

R. Watchilla clarified that the current zoning laws only allow tank farms by special permit in the commercial industrial and industrial zones.

R. Starodoj clarified that he views propane storage differently than the storage of other fuels because of the little environmental impacts it can have compared to oil and gas which would be possible to store there if it were in an industrial zone. A. Bergeron stated that prior to zoning the land had been used for industrial purposes. B. Bergeron stated he felt the likelihood of further residential building in the area was low because of the difficulty accessing parcel 38.

N. Talbot inquired what the maximum capacity of the propane storage would be. A. Bergeron replied that it would be two 30,000 gallon tanks taking approximately 4 acres.

S. Beckley stated some of the questions being asked were questions for special permit and not rezoning. N. Talbot stated she was looking for information about what infrastructure was on the property.

K. Crosby inquired what fire prevention measures are on the property. B. Bergeron responded that the property contained a detention pond

E. Hancock spoke clarifying what qualifications would need to be met to not be considered spot zoning.

R. Starodoj cited a circled paragraph in the letter the Planning Board was presented and said it described what the Bergeron's were attempting to do. He further stated that he does believe that having a local propane storage facility could benefit the town and help lower fuel prices. R. Starodoj stated if the property was surrounded entirely by rural land (no neighbors) he wouldn't have a problem because the incoming neighbors would be aware of the designation of the property when they chose to occupy it. However, the current neighbors built the existing houses with an awareness of what the properties' current use is. He believes it is up to the proponents to accommodate the residents around it.

K. Crosby asked what other industries are allowed in the industrial zone. A. Bergeron stated the property already looks completely different than a residential house and that the proposed propane would not be visible from the road.

R. Watchilla mentioned the parcel could be subdivided into an industrial subdivision. R. Starodoj responded saying that was a concern and clarified that he wasn't necessarily concerned with what the Bergeron's were going to do with the property but, what possibilities it would open up for future owners of the property should the zoning be changed.

B. Bergeron said he felt blindsided when the parcel was initially rezoned from rural business to rural residential and that he did not have enough notice. A. Bergeron cited the types of businesses allowed by special permit, but felt the property didn't lend itself to those.

R. Starodoj stated they weren't trying to keep the Bergeron's from turning a profit on their land, but, he'd like to hem it in and keep future landowners of the property from opening up a potentially undesirable business on the property if it is zoned as industrial.

E. Hancock suggested looking at the use table and seeing if something could be altered. R. Starodoj was inquiring about the possibility of applying an overlay district to the area which could be more narrowly defined to serve multiple properties down that corridor. K. Crosby and R. Watchilla favored the idea of adding an overlay district.

The board proceeded to discuss the positives and negatives of different types of zoning overlays and what criteria they would use to determine that.

**R. Starodoj stated this discussion will continue August 18, 2022**

## **OLD BUSINESS**

### **Review of Newly Proposed Subdivision Regulations Section 2.1 to 2.4.2 (pages 16-22)**

**Motion** made R. Starodoj to postpone the review of Newly Proposed Subdivision Regulations until September 2022. Seconded by E. Murphy. There was no additional discussion

R. Starodoj	Aye
E. Murphy	Aye
N. Talbot	Aye
K. Crosby	Aye

**All in favor. Approved 4/0/0.**

**Motion** made N. Talbot table the discussion of zoning changes until August 18, 2022. Seconded by E. Murphy. There was no additional discussion

R. Starodoj	Aye
E. Murphy	Aye
N. Talbot	Aye
K. Crosby	Aye

**All in favor. Approved 4/0/0.**

## **TOWN PLANNER UPDATE**

R. Watchilla said the consultants from the West Street Corridor study submitted their reports and they are available for perusal. Pare Corporation made several recommendations such as the addition of more turning lanes, more intersections with stop lights, and the practice of access management for parking lots. They also provided funding recommendations for sidewalk and roadway improvements. R. Watchilla said that he did find several non-conforming properties based on lot dimensions per current zoning regulations. IT was mentioned that high density mixed use would likely be the future of the West Street Corridor area based on development patterns.

R. Watchilla said that based on the census from 2020, the Town of Ware currently has a population of 10,066 people where the population in 2010 was 9,872. And said it showed a minor growth of 2.2%.

R. Starodoj asked if they do any research in what the increase in town costs would be. To which R. Watchilla responded that they do look at a number of factors. R. Starodoj followed up by asking if the increase in revenue from town growth would offset the increase in cost of services the town is required to provide and that high density buildings do not necessarily add to the town revenue and does not increase the tax base.

New Assistant hired and will start 8/8/2022

R. Watchilla asked if the board would still like him to research urban fill. To which they responded that yes they would like him to, as well as look into the non-conforming lots along the Highway Commercial corridor.

**ADJOURN**

**Motion** made by N. Talbot to adjourn the meeting at 8:35pm. Seconded by E. Murphy. No additional discussion.

R. Starodoj     Aye  
E. Murphy     Aye  
N. Talbot     Aye  
K. Crosby     Aye

**All in favor. Approved 4/0/0.**

**NEXT PLANNING BOARD MEETING DATE:**

**Thursday, August 18<sup>th</sup>, at 7:00pm.**

Minutes from Thursday, August 4<sup>th</sup>, 2022.

Respectfully submitted by,

Kristen Jacobsen  
Administrative Assistant  
Planning & Community Development

<p><b>Minutes Approved on:</b> _____</p> <p>Starodoj _____</p> <p>Murphy _____</p> <p>Talbot _____</p> <p>Crosby _____</p>
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# Town of Ware Scenic Road Bylaw Adopted TBD

126 Main Street  
Ware, MA 01082  
413-967-9648

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## 1.1 Purpose

The purpose of the Scenic Road Bylaw is to help the Town of Ware maintain and enhance its rural, small-town character by ensuring that work done to trees and stone walls on the public right-of way of scenic roads is done in a way that helps preserve the scenic, historic and aesthetic characteristics of the public right-of-way. In \*\*\*\*, Ware Town Meeting voted to accept the Scenic Road Bylaw and roads designated at this time. (See Designated Road List)

## 1.2 Definitions

The following terms not qualified or defined in the Scenic Roads Act, M.G.L. Ch.40, Sec 15C, shall be defined as follows for the purpose of this Bylaw.

*BRANCH* – A living branch that is fully attached to a tree (as defined herein) and that has a diameter of three inches (3”) or more twelve inches (12”) from the point at which said branch connects to the tree.

*CUTTING or REMOVING TREES* – The removal of one or more trees, trimming of branches (both as defined herein) or cutting of roots sufficient in the Tree Warden’s written opinion to cause eventual destruction of the tree. It does not include clearing nuisance growth, routine or emergency tree maintenance which removes only permanently diseased or damaged limbs, trunks or roots and dead trees or thinning overcrowded trees as determined by the Tree Warden.

*POLLARDING* – A pruning method where the new growth of a tree is cut back to the main stem or a framework of stubby branches. Promoting a dense head of foliage and branches. A method that causes a tree to provide less shade, to control its outward growth, and restrict canopy coverage.

*REPAIR, MAINTENANCE, RECONSTRUCTION or PAVING WORK* – Any work done within the right-of-way by any person or agency, public or private. Construction of new driveways or alterations of existing ones is included, insofar as it takes place within the right-of-way. Construction or alternation of water, sewer, electric, telephone, cable TV, or other utilities within the right-of-way is also included. This definition includes any work on any portion of the right-of-way which was not physically commenced at the time the road was designated as a Scenic Road.

*ROADS* – A vehicular traveled way plus its necessary appurtenances within the right-of-way, including bridge structures, drainage systems, retaining walls, traffic control devices, and sidewalks, but not intersecting streets or driveways. The right-of-way includes the area on and within the boundaries of the public way and air space above. If the boundaries are not officially known, any affected tree or stone wall shall be presumed to be within the public right-of-way until shown to be otherwise.

*TEARING DOWN or DESTRUCTION OF STONE WALLS* – The destruction of more than five (5) linear feet of stone wall involving more than one cubic foot of wall material per linear foot above existing grade. Temporary removal and replacement of a stone wall, within a reasonable period of time, not to exceed six (6) months, at the same location with the same materials is permitted without Planning Board approval if the Town Highway Department is notified before the work

begins. Repair of a stone wall not involving removal and/or destruction is not covered by this Bylaw.

*TREES* – A tree whose trunk has a diameter of four inches (4") or more as measured one-foot (1') above the ground. Nothing in this definition shall be construed to permit a person, other than the Tree Warden or his deputy, to trim, cut down or remove a public shade tree more than one and one-half inches (1½") in diameter one-foot (1') from the ground.

## 2.1 Designating a Road as a “Scenic Road”

The Planning Board, the Board of Selectman, Conservation Commission, Historical Commission, or Tree Warden may propose “Scenic Road” designation for any Ware Road or specific portion of a road other than a numbered route or state highway as a scenic road. A petition of at least ten (10) citizens who own property alongside a road that they wish to see designated may propose “Scenic Road” designation for their specific road, or a portion of said road, other than a numbered route or state highway as a scenic road.

The proposal must first get approval from the Planning Board. After the Planning Board has approved the proposal for Scenic Road designation, the Board shall make a recommendation to Town Meeting on the merits of designation of the proposed road as a Scenic Road.

### 2.1.1 Public Hearing Before the Planning Board

The proponent(s) of a candidate road for “Scenic Road” designation must request a public hearing with the Planning Board.

#### 2.1.1.1 Request for Public Hearing and Required Materials

If a proposal is brought forth by the Board of Selectman, Conservation Commission, Historical Commission, or Tree Warden, a signed letter addressed to the Planning Board accompanied with a written narrative, must be submitted to the Director of Planning & Community Development.

If a proposal is submitted to the Planning Board by a group of at least ten (10) citizens who own property alongside a proposed Scenic Road, the following documents must be submitted to the Director of Planning & Community Development:

- A petition with no less than ten (10) signatures of property owners who own land alongside the proposed Scenic Road.
- A written narrative describing the reason for this proposal and characteristics that qualify said road for Scenic Road designation.

Upon review by the Planning & Community Development Department, a public hearing will be scheduled with the Planning Board.

If the Planning Board proposes Scenic Road designation, they are not required to submit a written letter. The Board must, however, explain the reasoning and purpose for their proposal of Scenic Road designation.

#### 2.1.1.2 Notice of Public Hearing

The notice shall contain a statement as to the time, date, place and purpose of the hearing with a description of the proposed road for Scenic Road designation. Copies of the notice shall be sent to: Town Clerk, Board of Selectman, the Tree Warden, the Department of Public Works, the Conservation Commission, the Historical Commission and owners of property alongside the proposed Scenic Road (or section thereof) no less than seven (7) days prior to the public hearing.

### **2.1.1.3 Decision by the Planning Board**

In making its decision, the Planning Board shall consider the following criteria:

- Overall scenic beauty, rural character and view from roadside.
- Contribution of trees and/or stone walls to scenic beauty and rural character.
- Age and historic significance of roads, trees, and stone walls.

If the Planning Board approves a proposal for Scenic Road designation, the Board shall make a recommendation to Town Meeting on the merits of designation of the proposed road as a Scenic Road.

A notice of the Planning Board's decision and recommendation to Town Meeting must be sent to all landowners who own property along the proposed Scenic Road no more than thirty (30) days after the Board's decision.

## **2.1.2 Town Meeting**

### **2.1.2.1 Warrant for Town Meeting**

In compliance with M.G.L. Chapter 39 Section 10, the Planning Board shall make a recommendation to Town Meeting on the merits of designation of the proposed road as a Scenic Road.

### **2.1.2.2 Notice & Advertising**

The notice of Town Meeting (with an article pertaining to Scenic Road designation) shall contain a statement as to the time, date, place and purpose of the Town Meeting with a reasonable description of the action and its location. Copies of the notice shall be sent to: Town Clerk, Board of Selectman, the Tree Warden, the Department of Public Works, the Planning Board, the Conservation Commission, the Historical Commission and all property owners who own land along the proposed the Scenic Road (or section thereof) at least seven (7) days before the annual Town Meeting or fourteen (14) days before a special Town Meeting.

### 2.1.2.3 Decision at Town Meeting

Following the Town Meeting, if a road is approved for Scenic Road designation the Planning Board shall take the following steps within thirty (30) days of such designation:

- Notify all municipal departments that may take any action with respect to such road;
- Notify the Massachusetts Department of Transportation or appropriate authority;
- Indicate such designation on the Town Scenic Road Map;
- Notify all property owners who own property alongside the designated road;
- Notify major utility or cable companies or other such parties that may be working on such road.
- Update the Scenic Road list
- Include installation of Scenic Road sign? (can be attached to regular street sign)

## 2.2 Rescinding Designation of Scenic Roads

The Board of Selectman, Tree Warden, Conservation Commission, or Historical Commission may propose to the Planning Board for rescinding the designation of a Scenic Road for consideration at Town Meeting. Following the same process in section 2.1 of this bylaw, the proposal to rescind the designation of a Scenic Road shall go to the Planning Board for their approval, then the Planning Board shall make a recommendation to Town Meeting on the merits of rescinding the designation for the Scenic Road.

## 3.1 Shade Tree/Stone Wall Repair, Alteration or Removal

### 3.1.1 The Laws & Permitting Process

Two Massachusetts Laws – MLG Ch. 87 (Shade Tree Act) and MLG Ch. 40, Sec. 15C (Scenic Roads Act) – create overlapping responsibilities for the Tree Warden and the Planning Board in Ware.

The Shade Tree Act gives the Tree Warden jurisdiction over the planting or removal of any public shade trees in a public way or, in some circumstances, on a public property. In response to a proposal to remove public shade trees, the Tree Warden schedules a public hearing to solicit public input. Following the public hearing, the Warden decides whether or not the trees can be removed and, if so, whether conditions will be attached to that removal such as planting new trees.

The Scenic Roads Act, on the other hand, gives Planning Boards jurisdiction over the removal of any public shade trees or existing stone walls in a public way designated as a Scenic Road. The purpose of the Act is to protect the character of historic local roads by preventing the removal of key features-significant public shade trees and historic stone walls. To accomplish this, the Act requires that any proposal to remove public shade trees or stone walls must undergo a Planning Board public hearing to solicit public input, that the Board must then decide whether or not to allow the removal of the features, and, if so, to determine whether any conditions should be attached if removals are allowed.

Whenever there is a proposal to remove public shade trees on a Scenic Road, these two responsibilities overlap, and state law requires that a joint Planning Board/Tree Warden public hearing be held. The Planning Board and Tree Warden hear public input and then try to reach agreement on how to respond to the request. The public hearing process is the same as with any other permit application, and in some cases, the Tree Warden will be present to also provide information, receive public testimony, and be involved in the deliberations prior to reaching a decision. If a mutually agreeable decision can be reached, then the matter is concluded. When there is an irreconcilable dispute between the Planning Board and the Tree Warden, or if a written objection to a removal is filed by a citizen prior to or at a hearing, the matter of removal of the trees will go to the Select Board, which has jurisdiction over public ways, for final resolution.

### 3.1.2 Request for Public Hearing and Required Materials

Any person, organization, state or municipal agency seeking consent of the Planning Board regarding the cutting or removal of trees or the tearing down of stone walls or portions thereof, in connection with the repair, maintenance, reconstruction or paving work, including new

driveways on scenic roads, shall submit a request in writing to the Planning Board, together with the following:

- a plan showing the location and the nature of the proposed action and a description of the proposed changes to trees and stone walls;
- a statement of the purpose(s) for the change;
- Town of Ware Scenic Road – Shade Tree / Stone Wall Repair, Alteration or Removal Application;
- a list of owners of property (abutters) located within one-hundred (100') feet of the proposed action (this can be requested by the Assessor's Office for a fee);
- a deposit of \$300 to cover the costs of sending notices and advertising;
- any further explanatory information including proposed compensatory actions that may be useful to the Planning Board prior to the Public Hearing;

The Planning Board shall hold a public hearing within thirty (30) days of receipt of an application.

### 3.1.3 Notice & Advertising

The notice shall contain a statement as to the time, date, place and purpose of the hearing with a reasonable description of the action and its location proposed by the applicant. Copies of the notice shall be sent to: Town Clerk, Board of Selectman, the Tree Warden, the Department of Public Works, the Conservation Commission, and the Historical Commission and owners of property within one-hundred (100') feet of the proposed action no less than seven (7) days prior to the public hearing.

The public hearing shall be advertised twice in a newspaper of general circulation, the first advertisement to appear no less than fourteen (14) days prior to the public hearing and the second no less than seven (7) days prior to the public hearing. The advertisement shall contain a statement as to the time, date, place and purpose of the hearing with a reasonable description of the action and its location proposed by the applicant.

After the costs of advertising are taken out of the \$300 deposit paid by the applicant, **the remainder will be refunded back to the applicant.**

### 3.1.4 Decision of the Planning Board

The Planning Board shall approve, conditionally approve or deny an application within sixty (60) days after the close of the public hearing.

In making its decision, the Planning Board shall consider the following criteria:

- Preservation of natural resources;
- Preservation of historic resources;
- Preservations of scenic and aesthetic quality of the area;

- Protection of environmental systems;
- Public safety;
- Traffic volume, congestion and posted speed limits;
- Compensatory actions proposed, such as replacement of trees or walls;
- Existing or absence of reasonable alternatives;
- Compatibility with the surrounding neighborhood;
- Other planning considerations.

A notice indicating the Planning Board's decision shall be sent to the applicant and owners of property within one hundred (100) feet of the proposed action no more than three (3) weeks after the Planning Board's decision is made.

Any decision not carried out within two (2) years of issue shall be void and shall require a new filing.

## **4.1 Rules & Regulations**

### **4.1.1 Public Shade Tree Act**

Whenever both the Scenic Road Act and the Public Tree Act (M.G.L. Ch. 87) apply, notice shall be given and the Planning Board hearing shall be held in conjunction with the those held by the Tree Warden acting under M.G.L. Ch. 87. The consent of the Planning Board to a proposed action shall not be regarded as implying consent by the Tree Warden, or vice versa. The Planning Board decision shall contain a condition that no work shall take place until all applicable provisions of M.G.L. Ch. 87 have been complied with.

### **4.1.2 Compensatory Actions**

In making its decision, the Planning Board may grant an approval that otherwise would be denied if the overall effect of the proposed alteration, including compensatory action, such as the planting of new trees or the reconstruction of stone walls, is to maintain or improve the scenic quality or historical character of the road.

### **4.1.3 When Permits Are Not Required**

No permit is required to:

- Cut or remove trees or branches that the Tree Warden certifies in writing as diseased, dying or dead;
- Renovate a stone wall so long as it is renovated using the same type of materials, it is in the same location, and it has the same general character as the original wall.
- Conduct emergency work. If a stone wall is destroyed during an emergency, it must be repaired as soon as practicable and no longer than six (6) months.

### **4.1.4 Emergency Repair**

This Bylaw shall not apply when the Tree Warden acts in an emergency in accordance with the Law. In the event that the Board of Selectmen determine that emergency conditions require that work otherwise requiring Planning Board approval must proceed before such approval can be obtained, the Selectmen may authorize the work to proceed before Planning Board approval is obtained to the extent which the Selectmen deem necessary to protect public health and safety. In such cases, the Planning Board must be notified within five (5) business days of any action, which had the threat not existed, would be a violation of the Bylaw.

### **4.1.5 Driveways**

At a minimum, driveways shall be consistent with Ware regulations for residential driveways and curb-cuts and shall comply with this Bylaw.

Only one driveway cut per lot onto any designated scenic road shall be allowed. A new driveway onto a designated scenic road shall not exceed twenty-five (25') feet in width.

Stone wall removal limitations:

- Where stone walls exist the maximum amount of stone wall to be removed shall be the width of the driveway or new road at the location of the stone wall plus three (3') feet on each side.
- Unless otherwise waived, removed stone shall be used to repair other sections of the wall along the road.
- No wall shall be cut without construction of an appropriate terminus. Appropriate end points shall consist of stone piers, granite posts, stone walls with tapered ends turning back onto the lot along the drive, or wooden posts with or without a gate.

Tree removal limitations:

- No tree with a trunk exceeding eight (8") inches in diameter four (4') feet above ground level shall be cut (for a driveway or new road) unless the curb-cut cannot be safely located otherwise.
- Unless waived, whenever trees are removed, the applicant will plant equivalent native species elsewhere along the road right-of-way.

#### 4.1.6 Large-Scale Solar Energy Facilities and Battery Storage Facilities

New Large-Scale Solar Energy Facilities and Battery Storage Facilities must adhere to section 4.8.3 subsection C.6.c of the Ware Zoning Bylaw. This section states that:

*Any Large Solar Energy Facilities property along a designated Scenic Road shall have a setback of two-hundred 200' feet. The Planning Board may require additional buffering along such roads that is consistent with the rural New England character of said roads.*

Large Solar Energy Facilities that previously existed alongside a road before said road gained scenic road status, are exempt from the 200' foot setback requirement of this Scenic Road Bylaw.

Small Solar Energy Facilities (as defined in section 2.2 of the Zoning Bylaw) are not subject to section 4.8.3 of the Zoning Bylaw, and therefore are not subject to this section of the Scenic Road Bylaw.

The Planning Board may require additional trees to be planted in order to decrease the visibility of Large Solar Energy Facilities from the Scenic Road at ground level.

#### 4.1.7 Pollarding of Trees

Pollarding of trees along Scenic Roads is prohibited. The practice of pollarding effects the shade and canopy coverage that the trees provide as well as decreasing biological activity. Several benefits including health and temperature control are associated with increased shade and canopy coverage. Pollarding negates these aspects.

#### 4.1.8 Work on Trees in the Public Right-of-Way

Both the Scenic Road Bylaw and the Public Shade Tree Law control work on trees in the public right-of-way.

These are key elements of the Public Shade Tree Law:

- All trees within the public way are defined as public shade trees. If there is any question about whether a tree is in a public way, it is considered in the public way until the contrary is shown.
- The Tree Warden and the Town of Ware are responsible for the care, control, protection and maintenance of all public shade trees, except those within a state highway, and enforces all the provisions of the Law for the preservation of public shade trees.
- No other person may plant, trim, cut or remove a public shade tree without the permission of the Tree Warden or the Planning and Community Development Department.
- No person, including the Tree Warden, may cut, trim or remove any tree greater than six inches (6") inches (or as determined by the Tree Warden) in diameter without a public hearing.
- Shall not impinge on regular road routine road maintenance
- Public notice of such a hearing must be posted at least seven (7) days prior to the hearing on the trees in question, in town or more public places in town, and in a newspaper of general circulation for the town, in each of two successive weeks.
- The Tree Warden shall not cut or remove a public shade tree if, at or before the public hearing, objection is made by one or more persons, unless such cutting or removal is approved by the Board of Selectmen.

Nothing contained in M.G.L. Chapter 87 shall prevent the trimming, cutting or removal of any tree that endangers persons travelling on a highway, or the removal of any tree, if so ordered by the proper officer, for the purpose of widening the highway.

#### 4.1.9 Road Construction Aid

In accordance with M.G.L. Chapter 40, Section 15C, designation of a road as a Scenic Road shall not affect the eligibility of the Town of Ware to receive construction or reconstruction aid for such road pursuant to the provisions of M.G.L. Chapter 90.

## 5.1 Enforcement; Violations and Penalties

The Planning Board and Tree Warden will enforce the Scenic Road Bylaw. Anyone who violates the Bylaw is subject to a fine. Removal of each tree and each linear foot of stone wall are considered separate violations.

- Failure to file with the Planning Board for permission to cut or remove trees or for destruction of any portion of a stone wall within any designated scenic road will require an immediate filing as detailed above, the applicant shall be required to restore features. This restoration shall consist of replacing the stone wall as necessary and replacing the trees cut on a square-inch-per-square-inch basis (combined area of the replacement trees measured one (1') foot above ground level to equal total area of the original tree trunk as measured at the stump) at locations specified by the Planning Board.
- Failure to comply with a duly issued decision of the Planning Board shall be subject to restoration as detailed above and other remedial measures that the Planning Board deems necessary. Any decision not carried out within two (2) years of issue shall be void and shall require a new filing.
- The Planning Board and the Tree Warden shall have the authority to enforce the provisions of this Bylaw.
- Any violations of this Bylaw, M.G.L Ch. 40, Sec. 15C or a Planning Board decision issued under this Bylaw shall be punishable by a fine not to exceed \$300.00.

(End of Bylaw)

## Appendix A – List of Scenic Roads (Proposed)

Note: this section cannot include state owned roads, i.e. Route 9 and Route 32.

Babcock Tavern Road

Bacon Road

Campbell Road

Chestnut Street

Doane Road

Fisherdick Road

Greenwich Plains Road

Greenwich Road

Hardwick Pond Road

Malbeouf Road

Monson Turnpike Road

Old Gilbertville Road

Old Greenwich Plains Road

River Road

South Street

Stage Coach Road

Sczygiel Road

Upper Church Street

Warren Road

Webster Road

## Appendix B – Map of Scenic Roads

Town of Ware Planning & Community Development  
126 Main Street, Ware, MA 01082  
413-967-9648 x120



# Town of Ware Planning Board / Tree Warden

## Scenic Road – Shade Tree / Stone Wall Repair, Alteration or Removal Application

Applicant Name \_\_\_\_\_ Date \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
Phone Number \_\_\_\_\_ Cell \_\_\_\_\_  
Email \_\_\_\_\_

### PROJECT INFORMATION:

Property Address: \_\_\_\_\_

Assessor's Parcel ID: \_\_\_\_\_

Description of location of trees and/or stone wall to be removed: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

List the Species of Tree(s) to be Removed & Quantity & Size(s): \_\_\_\_\_

\_\_\_\_\_

How will you replace the trees and/or stone wall removed? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reason / Request for Removal: \_\_\_\_\_

\_\_\_\_\_

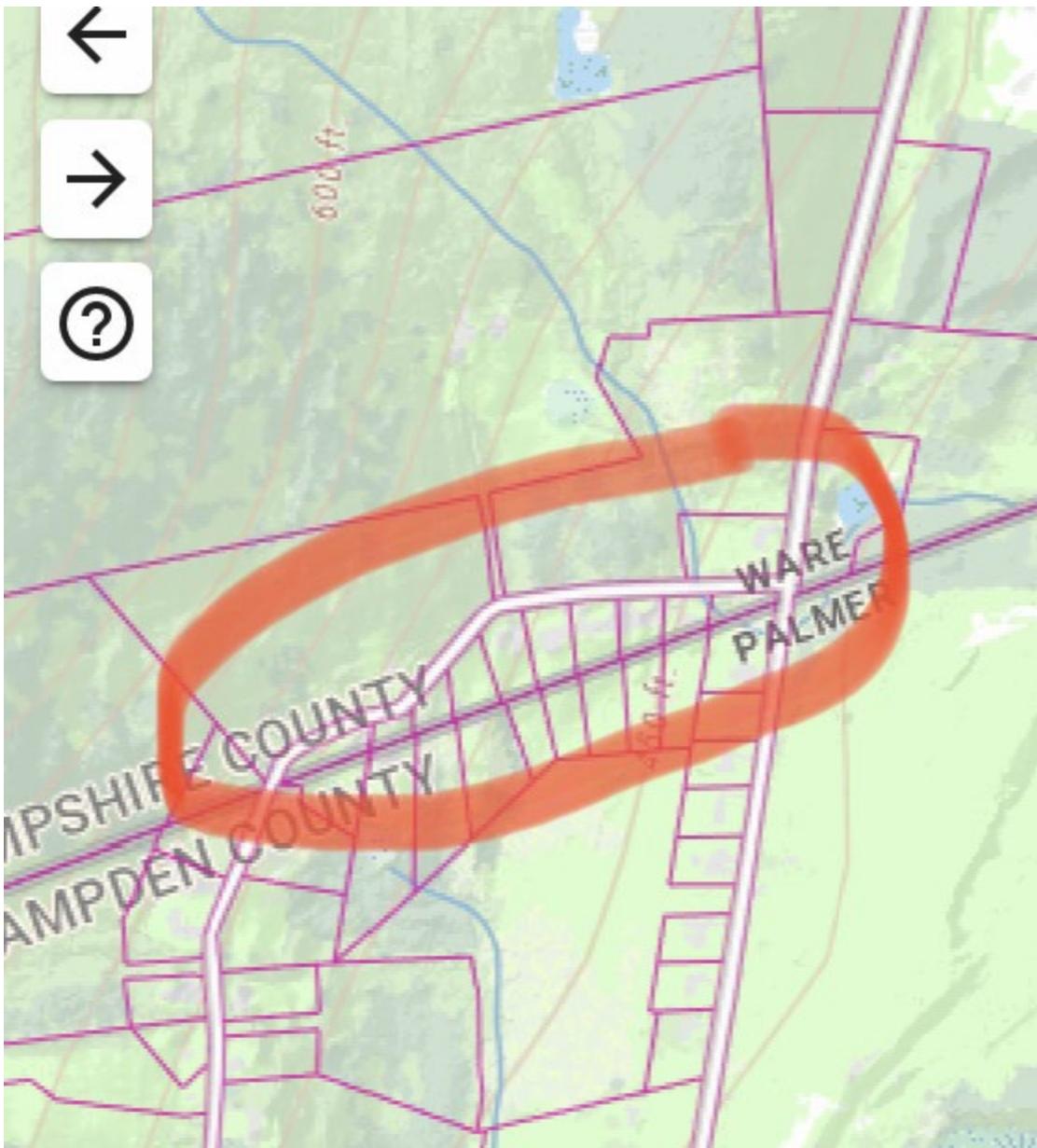
Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

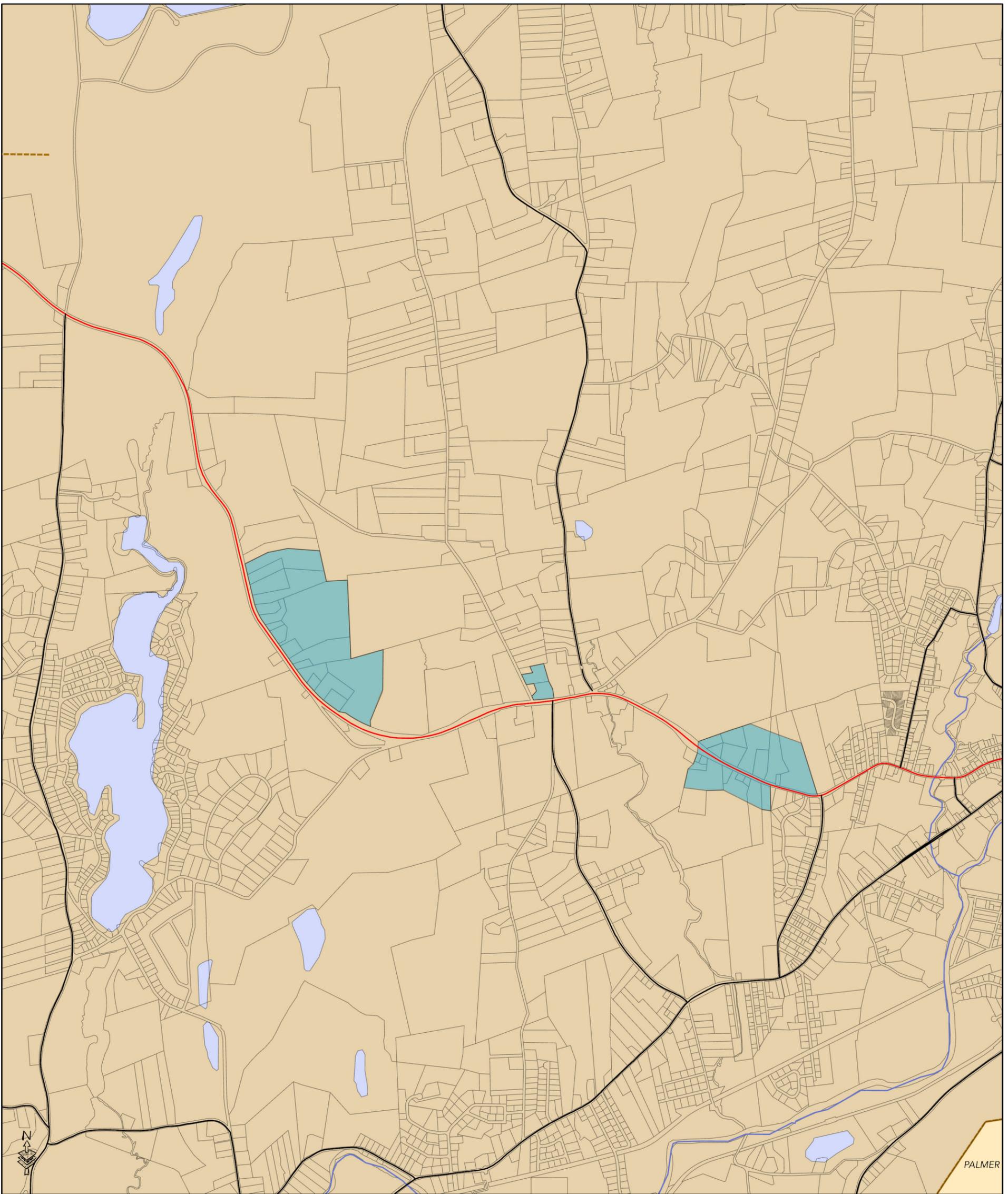
<b>Board Use Only:</b>	
Filing Date: _____	Deposit: \$300
Public Hearing Date: _____	Board Decision: _____
Date of Decision: _____	Tree Warden Notified Date: _____
Conditions: _____	
_____	
_____	

**From:** [Claudia Kadra](#)  
**To:** [WHC & MHouse Lynn Lak](#); [Watchilla, Robert](#)  
**Subject:** Re: Meeting Packet for Planning Board Meeting (Thursday, August 18th at 7pm)  
**Date:** Wednesday, August 17, 2022 3:29:59 PM

**CAUTION:** This email originated from outside of the Town of Ware organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

For tomorrow's meeting; photo from MassGIS.  
Elizabeth Hancock had inquired about adding Kelly Rd to the list of scenic roads.  
There is no Ware /Palmer town line sign (that I could locate), and there are only about 8 houses/lots on the Ware section. The Palmer section of the road contains the stonewalls, trees, views.  
Thanks,  
Claudia





## Legend

- Proposed Rural Business District
- Parcels 2021
- Rt 9
- Local Roads

The Rural Business Overlay District encompasses areas along the Route 9 Corridor that makes up half of the former "Residential Business 2 (RB2)" Zoning District (prior to 2012), as well as areas that have current commercial and mixed-uses. The underlying reason for creating the overlay district are to allow for economic development along this historic commercial corridor by limiting the size and type of commercial/industrial uses allowed. This will help to preserve the open space that exists within the Rural Residential (RR) district. (See Section 4.\*\*\*\*\* of the Zoning Bylaw.)

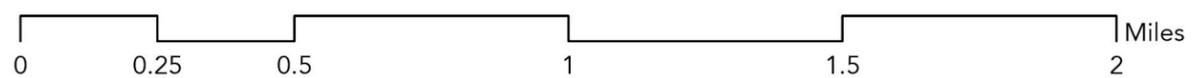
## Town of Ware Proposed Rural Business Overlay District District Approved TBD



Planning Department  
126 Main Street, Suite G  
Ware, MA 01082

413-967-9648  
[www.townofware.com](http://www.townofware.com)

Sources:  
MA DOT: Roads.  
Data downloaded from MassGIS February 2012  
and August 2022.



3.3.2 *Parcels transected by one or more zoning district boundaries.*

- A. The use regulations for the less restricted portion of such parcel may extend not more than 30 feet into the more restricted portion, or, by special permit, not more than 100 feet into the more restricted portion. In such applications, the Special Permit Granting Authority shall first determine that the proposed use will have no detrimental impact on abutting properties and uses. This provision does not apply to overlay districts.
- B. The area, frontage, and setback requirements of §5.1 shall be determined based on the requirements of the district where at least 50% of the proposed structure will be located.

3.4 **Overlay Districts**

3.4.1 *FP – Floodplain.* The purposes of the floodplain district are to protect the public health, safety, and general welfare, to protect human life and property from the hazards of periodic flooding, to preserve the natural flood control characteristics and the flood storage capacity of the floodplain, and to preserve and maintain the groundwater table and water recharge areas within the floodplain.

3.4.2 *AP – Aquifer Protection.* The purposes of the aquifer protection district are to protect, preserve and maintain present and potential sources of public and private water supplies including their recharge areas, conserve the natural resources of the town, and prevent temporary and permanent contamination of the environment due to adverse land use practices.

3.4.3 *RRB – Rural Business.* The purpose of the rural business overlay district is to preserve the scenic rural character of the route 9 corridor, while allowing for commercial development that is in keeping with adjoining uses and in harmony with the natural environment. This district allows for the potential of economic development while minimizing the impacts to the rural character of the corridor.

## 4.9 Overlay District Regulations

### 4.9.1 Floodplain

### 4.9.2 Aquifer Protection

### 4.9.3 Rural Business

#### A. Purpose. The purposes of the Rural Business District are to:

1. Allow for commercial development that is in keeping with adjoining uses and in harmony with the natural environment.
2. Preserve the scenic rural character of the route 9 corridor.
3. Promote economic development along a heavily traveled state highway.

#### B. District Delineation

1. The general boundaries of the Rural Business Overlay District are shown on the "Rural Business Overlay District" Map dated \*\*\*\*\*, 2022.

#### C. Use Regulations

1. The Rural Business District is established as an overlay district over the Rural Residential (RR) district. Any uses permitted in the RR district by right or by special permit shall continue to be permitted by right or by special permit. The provisions of the Rural Business District shall only apply to parcels that are 5 acres or greater in size.
2. Reference to Existing Regulations. All development in the Rural Business Overlay District, including structural and non-structural activities, must be in compliance with the dimensional and parking requirements as required in the RR district, unless otherwise specified for each permitted use in this section.
3. Permitted Uses. The following uses are allowed by right in the Rural Business Overlay District:
  - a) All uses allowed by right (Y) in the Rural Residential (RR) District. (refer to section 4.2 Use Table)
4. Uses Permitted by Special Permit and Site Plan Review (when applicable, see section 7.4.2). The following uses are allowed by Special Permit in the Rural Business District:
  - a) All uses allowed by special permit (SP) in the Rural Residential (RR) District. (see section 4.2 Use Table)
  - b) Business, Finance, or Other Professional Offices
  - c) Office or clinic for health services
  - d) Laboratory
  - e) Research Facility
  - f) Auto Service
  - g) Self-service Storage Facility
  - h) Light Industry (see section 2.2 Definitions)
  - i) Tank Farm
    - Limited only to the storage of gases including natural gases, propane, methane, butane, and ethane.
    - Tank farms shall adhere to a setback requirement of 100 feet from the nearest property line and 50 feet from the nearest primary structure in order to protect the welfare and safety of abutting neighbors.

#### D. Special Permit Approval Criteria. The SPGA may grant a special permit after a duly noticed

public hearing in accordance with §7.2 of this Zoning Bylaw provided it finds that the proposed use:

1. Will be designed to avoid substantial disturbance to the natural environment to include (but not limited to) soils, topography, drainage, vegetation, and ground water;
2. Is in harmony with the purpose and intent of this ordinance and will promote the purposes of the Aquifer Protection Overlay District; and
3. Is consistent with the existing and probable future development of surrounding area

**Definitions to include pertaining to Urban Fill (will be inserted into section 2.2)**

Contaminated Sediments - Sediments containing oil and/or hazardous material associated with a release for which notification is required by 310 CMR 40.0300 and 40.1600.

Contaminated Soils - Soil containing oil and/or hazardous material at concentrations equal to or greater than a release notification threshold established by 310 CMR 40.0300 and 40.1600.

Fill Material - Soil, sediments, rock and/or stone obtained off-site that is used to fill holes or depressions, create mounds, or otherwise artificially change the grade or elevation of real property.

Historic Fill - Fill Material that based on the weight of evidence and consistent with the Conceptual Site Model (see 310 CMR 40.0006):

- (a) was emplaced before January 1, 1983;
- (b) may contain, but is not primarily composed of, construction and demolition debris, reworked soils, dredge spoils, coal ash, wood ash or other solid waste material;
- (c) was contaminated with metals, hydrocarbons, and/or polycyclic aromatic hydrocarbons prior to emplacement, at concentrations consistent with the pervasive use and release of such materials prior to 1983;
- (d) does not contain oil or hazardous materials originating from operations or activities at the location of emplacement;
- (e) is not and does not contain a generated hazardous waste, other than Oil or Waste Oil;
- (f) does not contain chemical production waste, manufacturing waste, or waste from processing of metal or mineral ores, residues, slag or tailings; and
- (g) does not contain waste material disposed in a municipal solid waste dump, burning dump, landfill, waste lagoon or other waste disposal location.

shall not exceed the height recommended by the manufacturer, or 150 feet maximum from the base of the structure to the highest point of the equipment, or 35 feet above the surrounding tree canopy, whichever is less. The minimum setback requirement for a wind monitoring tower shall be equal to two times the height of the tower. At the end of the monitoring period, or one year from the date of construction, whichever comes first, the tower and all accessory structures shall be removed from the site unless an application for a special permit for a wind energy facility is submitted pursuant to §4.8.4 of this Zoning Bylaw.

- 4.6 **Exempt Uses.** MGL c. 40A §3 lists uses which are exempt from local Zoning Bylaws, but which may be required to conform to certain standards. These include churches or other religious institutions, schools and other educational uses, and daycare centers, which shall be permitted in any district within the Town of Ware, subject to the dimensional requirements of Article 5, the parking requirements of Article 6, §6.1, and the buffering requirements of Article 6, §6.2.

#### 4.7 **Prohibited Uses**

4.7.1 *Prohibited Uses.* Any use not specifically or generically listed in §4.2, Use Table, or not otherwise permitted in a district shall be deemed as prohibited, including the specific uses below which are spelled out as a matter of clarification.

- A. Any nonresidential use which is dangerous or detrimental to a neighborhood because of fire or explosive hazard, offensive noise, smoke, vibration, harmful radioactivity, electrical interference, dust, odor, fumes, heat, glare, unsightliness or other objectionable characteristics, as determined by the Building Inspector.
- B. Mobile Homes are prohibited in all districts unless located in a Mobile Home Park.
- C. Motels.
- D. Occupancy of a recreational vehicle for more than 30 days in a calendar year (whether continuous or not) is prohibited. This shall not be construed to mean a homeowner cannot park his own recreational vehicle on his lot for storage purposes.
- E. Motorized sports facilities, such as but not limited to off-road vehicle tracks and race car tracks, are prohibited.
- F. The use of Contaminated Sediments and Contaminated Soils as Fill Material (see §2.2) to fill holes or depressions, create mounds, or otherwise artificially change the grade or elevation of real property.

#### 4.8 **Special Use Regulations**

4.8.1 *Flexible Residential Open Space Development (FROSD)* is allowed by-right in the RR, SR, DTR, and RB districts, and is intended to provide an alternative to landowners wishing to develop land for residential use in a more efficient manner than a standard subdivision, while preserving open space.

- d) The SPGA may specify such additional requirements and conditions as it finds necessary to protect the health, safety, and welfare of the public and occupants of the proposed use.

#### 4.9.2 Aquifer Protection

- A. Purpose. The purpose of the Aquifer Protection Overlay District is to promote the health, safety, and general welfare of the community by ensuring an adequate supply of potable water through the protection of present and potential sources of water supply, including aquifer and aquifer recharge areas. To this end, there are two levels of regulation for such areas in Ware; a higher level which covers the areas known to contribute directly to a public water supply, and a lower level which covers the areas thought to potentially contribute to a water supply.
- B. Location.
  1. The Aquifer Protection Overlay District is comprised of two areas: the Zone II Groundwater Protection Area plus the Interim Wellhead Protection Area (IWPA), and the high plus medium yield aquifer areas.
  2. The Aquifer Protection Overlay District is shown on the Aquifer Protection Overlay District map dated March 8, 2012, which is hereby incorporated as part of this Zoning Bylaw.
  3. Where a boundary of the Aquifer Protection district is in dispute, the burden of proof for determining the correct location shall rest with the applicant, and any agreed upon resolution of ambiguity in the precise location of the boundary may be used in the administration of this §4.9.2. The boundaries of the Aquifer Protection district shall only be modified by a zoning amendment adopted by Town Meeting, pursuant to MGL c. 40A §5.
  4. When a parcel is split by a boundary of the Aquifer Protection district, the provisions of this §4.9.2 shall only apply to the area within the Aquifer Protection district.
  5. As an overlay district, the regulations for the underlying district remain in effect but all uses are subject to the provisions of this §4.9.2.
- C. Regulations Applicable to the Entire Aquifer Protection District.
  1. Permitted Uses. The following uses are permitted within all areas of the Aquifer Protection district, provided that all necessary permits, orders, or approvals required by local, state, or federal law are obtained:
    - a) conservation of soil, water, plants, and wildlife;
    - b) outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted;
    - c) foot, bicycle and/or horse paths, and bridges;
    - d) normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
    - e) maintenance, repair, and enlargement of any existing structure, subject to the provisions of this Section;
    - f) residential development, subject to the provisions of this Section;

- g) farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to prohibited uses and special permitted uses;
  - h) construction, maintenance, repair and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels. Underground storage tanks related to these activities are not categorically permitted.
2. Prohibited Uses:
- a) disposal of leachable wastes with the exception of subsurface waste disposal systems approved through Title V;
  - b) The use of Contaminated Sediments and Contaminated Soils as Fill Material (see §2.2) to fill holes or depressions, create mounds, or otherwise artificially change the grade or elevation of real property.
3. Uses Requiring a Special Permit:
- a) Any proposed new development that will render 50% or more of the parcel impervious.
  - b) Nonresidential uses permitted by right or by special permit in the underlying district, except for those specifically prohibited in this §4.9.2.
  - c) Disposal of solid waste other than brush or stumps.
- D. Regulations Applicable to the Zone II and IWPA Areas:
1. Prohibited Uses:
- a) landfills and open dumps as defined in 310 CMR 19.006.
  - b) automobile graveyards and junkyards, as defined in MGL c. 140B §1.
  - c) landfills receiving only wastewater and/or septage residuals including those approved by the Department pursuant to NLG-LC-21 Sec. 2-6 through 53, MGL c. III §17; MGL c. 83 §6 and 7, and regulations promulgated thereunder.
  - d) facilities that generate, treat, store, or dispose of hazardous waste that are subject to MGL c. 21 C and 310 CMR 30.00, except for the following:
    - (1) very small quantity generators as defined under 310 CMR 30.000;
    - (2) household & hazardous waste centers and events under 310 CMR 30.390;
    - (3) waste oil retention facilities required by MGL c. 21 §52A;
    - (4) water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters.
  - e) petroleum, oils, and heating oil bulk stations and terminals including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5171 and 5983. SIC Codes are established by the US Office of Management and Budget and may be determined by referring to the publication, Standard Industrial Classification Manual, and other subsequent amendments.
  - f) storage of liquid hazardous materials, as defined in MGL c. 21E, and liquid petroleum products, unless such storage is above ground level and on an impervious surface, and either in container(s) or above ground tank(s) within a building, or outdoors in covered container(s) or above ground tank(s) in an area that has a containment system designed and operated to

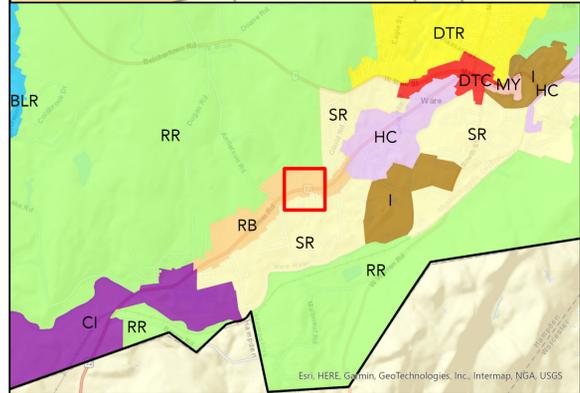
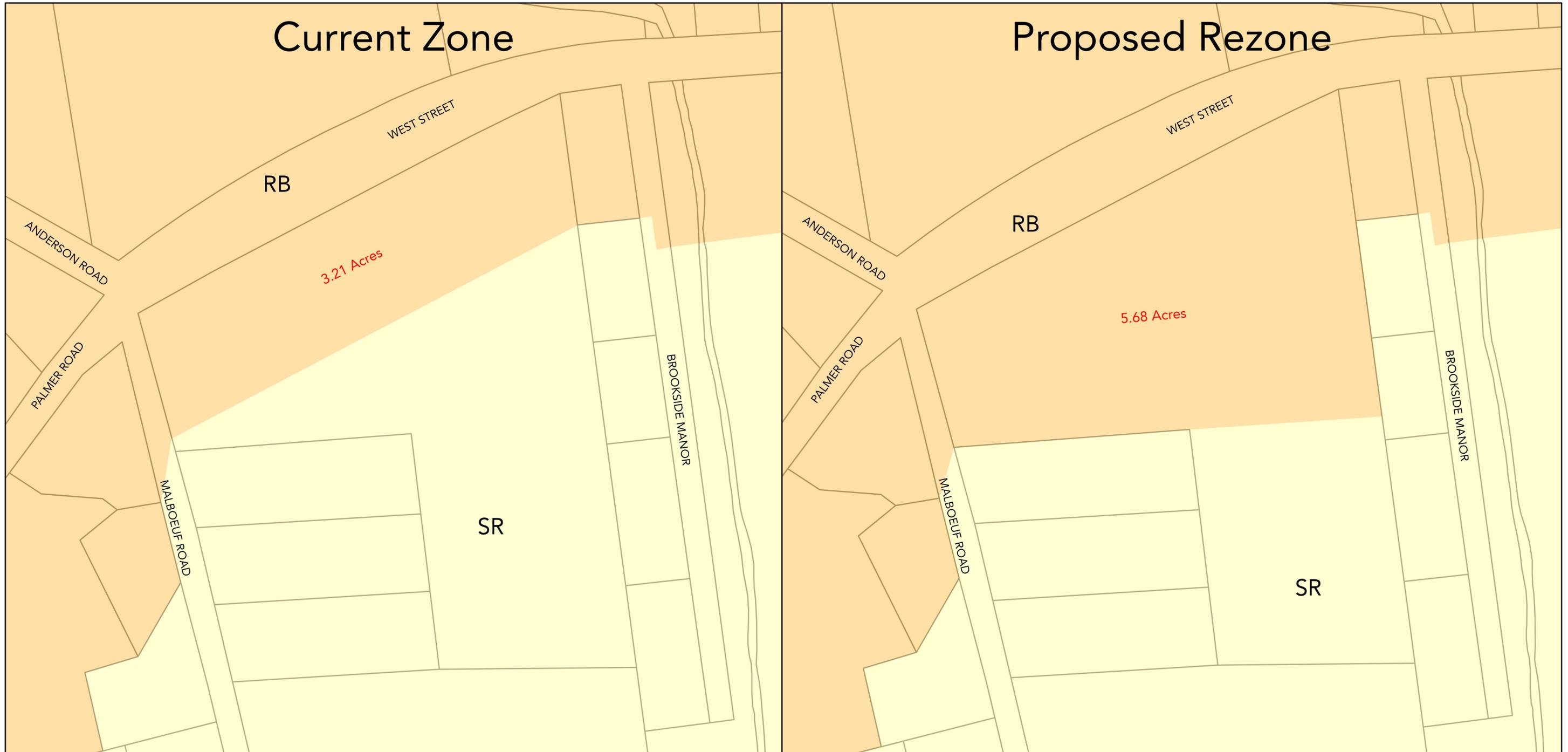
hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater.

However, these storage requirements shall not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline provided the replacement is performed in a manner consistent with state and local requirements.

- g) storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31.
  - h) storage of deicing chemicals or animal manure unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
  - i) earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material to within ten feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works.
  - j) treatment or disposal works subject to 314 CMR 5.00, for wastewater other than sanitary sewage. This prohibition includes, but is not limited to, treatment or disposal works related to activities under the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6) (Title 5), except the following:
    - (1) the replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
    - (2) treatment works approved by the Department designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3), or 5.05(13);
    - (3) publicly owned treatment works.
  - k) stockpiling and disposal of snow and ice removed from highways and streets located outside the Zone II that contain sodium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.
  - l) storage of commercial fertilizers, as defined in MGL c. 128 §64, unless such storage is within a structure designated to prevent the generation and escape of contaminated runoff or leachate.
  - m) any floor drainage systems in existing facilities, in industrial or commercial process areas or hazardous material and/or hazardous waste storage areas, which discharge to the ground without a DEP permit or authorization. Any existing facility with such a drainage system shall be required to either seal the floor drain (in accordance with the state plumbing code, 248 CMR 2.00), connect the drain to a municipal sewer system (with all appropriate permits and pretreatment), or connect the drain to a holding tank meeting the requirements of all appropriate DEP regulations and policies.
2. Uses Requiring a Special Permit:
- a) Pre-existing nonconforming uses may be extended or altered upon the granting of a special permit.
  - b) Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use,

- except as prohibited under §4.9.2 D.1.
- c) Any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater. For such proposals, a system for groundwater recharge must be provided which does not degrade groundwater quality. For nonresidential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all nonresidential uses, all such basins and wells shall be preceded by oil, grease, and sedimentation traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.
- E. Application Requirements. The applicant shall file five (5) copies of a site plan, to be prepared by an Engineer registered in the Commonwealth of Massachusetts, which shall include, at the minimum, the following:
1. Provisions to prevent contamination of groundwater by petroleum products, hazardous materials or wastes;
  2. Drainage recharge features and provisions to prevent loss of recharge;
  3. Provisions to prevent soil compaction;
  4. Provisions to prevent seepage from sewer pipes;
  5. A complete list of chemicals, pesticides, fuels and other hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use. Those businesses using or storing such hazardous materials shall file a definitive operating plan; for those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Hazardous Materials Coordinator, Fire Chief, and Board of Health. The plan shall include:
    - a) provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and cleanup procedures,
    - b) provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;
    - c) evidence of compliance with the Regulations of the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from the Massachusetts Department of Environmental Protection.
  6. A plot plan showing:
    - a) Location of wetlands, streams, water bodies, and flood plain;
    - b) Existing drainage patterns;
    - c) Existing woodland;
    - d) Areas having slopes exceeding 15';
    - e) Areas to be disturbed by construction;
    - f) Areas where earth and other material subject to erosion will be temporarily stockpiled;
    - g) Areas to be used for disposal or storage of construction debris, stones, stumps, etc. if within the district;
    - h) Temporary and permanent erosion control measures planned, such as sediment basins, storm water basins, diversions, riprap, stabilization seedings, etc.;
-

- i) Temporary work roads to be used during projects;
  - j) Locations and sizes of septic system;
  - k) Suitable method to contain spillage in fuel filling areas.
7. A storm drainage plan showing:
- a) Locations of drains and culverts, and names of streams, rivers, ponds, or reservoirs in the town into which they flow;
  - b) Discharge peaks and expected velocities at drain or culvert outlets;
  - c) Conditions above and below outlets and expected flow velocities;
  - d) Supporting computations for the above.
8. A grading plan showing existing topography and planned grade along existing and/or proposed street or highway profiles.
9. A siltation and sedimentation control plan including:
- a) Sediment and erosion control structures such as diversions, waterways, slope stabilization structures, sediment basins, etc., in sufficient detail to implement their installation together with referred standards for soil erosion and sediment as appropriate, and design calculations as required for each structure;
  - b) Seeding and/or sodding requirements for all exposed areas including seedbed preparation, seed mixtures, lime, fertilizer, and mulching requirements with referenced standards;
  - c) Schedule or sequence of operation with starting dates for clearing and/or grading, timing for storm drain and culvert installation, duration of exposure of soils and critical area stabilizations, both temporary and permanent. Indicate dates when critical area stabilization, paving, seeding, mulching or sodding is to be completed;
  - d) General notes for sediment control that spell out the procedures for implementing the plan.
- F. Special Permit Approval Criteria. The SPGA may grant a special permit after a duly noticed public hearing in accordance with §7.2 of this Zoning Bylaw provided it finds that the proposed use:
- 1. Will in no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of groundwater;
  - 2. Will be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed;
  - 3. Is in harmony with the purpose and intent of this ordinance and will promote the purposes of the Aquifer Protection Overlay District; and
  - 4. Is consistent with the existing and probable future development of surrounding areas.
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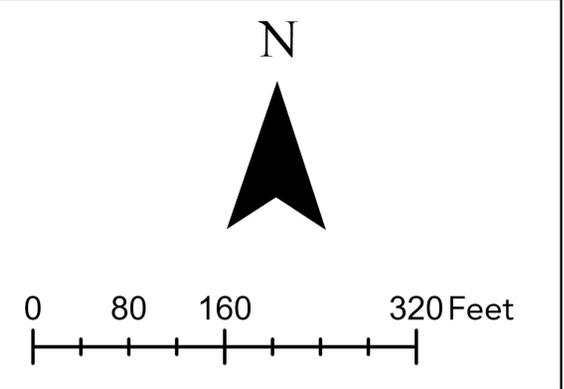


# RB Zoning Boundary Change Map

Proposed Zoning District Alteration of the Residential Business (RB) District  
 Coordinates: 72°15'56"W 42°14'52"N

Prepared for the Representatives of Tractor Supply  
 Location: 256 West Street, Ware, MA

2022



	Residential					Mixed <sup>1</sup>			Commercial/Industrial		
	<i>RQ</i>	<i>RR</i>	<i>SR</i>	<i>BLR</i>	<i>DTR</i>	<i>RB</i>	<i>DTC</i>	<i>MY</i>	<i>HC</i>	<i>CI</i>	<i>I</i>
Sales of agricultural or horticultural products and associated supplies, partly or wholly outdoors, not associated with an agricultural use (category C above)	N	SP	N	N	N	Y	SP	Y	Y	Y	N

\*\*\*\*\* Category C indicates Agricultural uses\*\*\*\*\*

## Town Planner Update: August 18<sup>th</sup>, 2022

- **Introduction of New PCD Admin Assistant: Kristen Jacobsen**
- **The Façade Improvement Program Application window is open**
  - Applications are due to the Pioneer Valley Planning Commission by October 1.
  - They can be found on the Town of Ware Planning & Community Development webpage under "Planning & Community Development News".
- **The Planning Board is still accepting applications for the vacant seat**
  - The term would expire in April of 2023, during the annual Town Elections.
  - Those interested should reach out to the Planning & Community Development Department.